

## **REMARKS**

Claims 1, 12 and 13 have been amended.

Claims 30-33 have been added.

The assignee's attorney thanks the Examiner and the Supervising Primary Examiner for their time and courtesy in the interview of November 16, 2006, which has advanced prosecution of this application.

The telephonic election of claims 1-13 is confirmed. Nonelected claims 14-29 have been canceled.

The specification has been amended to identify all parent applications by serial number as well as patent number. Priority to these documents has been claimed previously; the amendment simply provides the serial number for each of those documents in addition to the patent number previously provided.

At the interview, it was pointed out that copies of foreign patent applications had been provided in a parent application under 37 CFR 1.98(d) and MPEP 609.02(B)(2). However, the Examiner and the Supervising Primary Examiner noted that such copies may not have reached the file of the current application as a result of the transition from paper to electronic files. In order to advance prosecution, copies of those foreign patent documents that have not been considered by the Examiner will be provided voluntarily in a separately-filed IDS.

To the extent that it is not necessary to address rejections of dependent claims to provide a complete response to the Office Action, the choice not to discuss such rejections is not, and cannot be interpreted as, acquiescence to such rejections, nor can it be construed to limit the scope of any claims that may issue in this patent application or any patent application claiming priority to this one.

### 35 U.S.C. §102

MPEP 2131 quotes Verdegaal Brothers v. Union Oil of California, 814 F.2d 628, 631 (Fed. Cir. 1987) for the legal standard of anticipation: “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” (emphasis added).

#### Claims 1-8, 10-13, 30-33

Amended claim 1 claims “[a] surgical method for manipulating a graft vessel relative to a target vessel, comprising: making a substantially longitudinal incision in a wall of the graft vessel at an end thereof to form a flap therein; providing a staple holder having spaced-apart arms, a graft affixer projecting therefrom, and a plurality of discrete connectors held by said staple holder, each said arm independently holding at least one said discrete connector; placing a portion of the graft vessel between said spaced-apart arms; and engaging the graft vessel with said graft affixer.”

In contrast, U.S. Pat. No. 6,254,617 to Spence et. al. (“Spence”) does not expressly or inherently describe each and every element of amended claim 1. First, Spence does not describe “a staple holder having spaced-apart arms...and a plurality of discrete connectors held by said staple holder, each said arm independently holding at least one said discrete connector,” as required by amended claim 1. Instead, Spence describes an instrument 300 having tongs 302, 304 that together hold an anastomosis cuff 40. (Spence; *e.g.*, col. 13, lines 22-60; col. 15, lines 14-57; col. 20, lines 14-23; Figure 31). The method of Spence can be performed with a single cuff 40, which is limited to use in performing a side-to-side anastomosis, or two cuffs 40”, 40”, which may be used in performing either a side-to-side or an end-to-side anastomosis. (Spence; *e.g.*, col. 13, lines 22-60; col. 15, lines 14-57 (particularly lines 54-57); Figures 17, 22). Regardless of whether one or two cuffs are used to perform anastomosis, the tongs 302, 304 of Spence together hold a single cuff; each tong 302, 304 conforms to “one-half the shape of a cuff whereby a cuff will be securely held in the tongs as

indicated in FIG. 31.” (Spence; col. 20, lines 18-20; Figure 31) (emphasis added). That is, the tongs 302, 304 hold only a single cuff 40. Thus, both tongs 302, 304 do not hold “a plurality of discrete connectors,” as required by amended claim 1. (emphasis added). Further, the tongs 302, 304 do not each “independently hold[] at least one said discrete connector,” as required by claim 1; instead, both tongs 302, 304 cooperate to hold a single cuff.

Second, tissue retention pins 62, having distal ends 66, are attached to the body 42 of the cuff 40, and thus are not “discrete”; instead, they are simply components of the cuff 40 connected together by the body 42 of the cuff 40. (Spence; col. 13, lines 34-37; col. 14, lines 1-4; Figures 12, 14) Thus, the tissue retention pins 62 are not analogous to the claimed “discrete connector[s]”.

Third, the Office Action characterizes the item 101 of Figure 31 of Spence as the claimed “graft affixer.” However, Spence nowhere describes item 101 in its specification; the reference number 101 is absent from Spence. Thus, it is unclear what item 101 is or what function it performs, and it does not and cannot describe the claimed “graft affixer.”

Thus, Spence does not expressly or inherently describe each and every element claimed in amended claim 1, and claim 1 is believed to be in condition for allowance. Claims 2-8, 10-13 and 30-33 depend from claim 1, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

### **35 U.S.C. §103**

#### **Claim 9**

Claim 9 depends from claim 1, which is believed to be in condition for allowance, and is thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

**REQUEST FOR ALLOWANCE**

Allowance of the pending claims is respectfully solicited. Please contact the undersigned if there are any questions.

Respectfully submitted,

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